



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [REDACTED]

Office: El Paso

Date:

JAN 24 2000

IN RE: Obligor:

Bonded Alien:



IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR:

Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, El Paso, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted and the order dismissing the appeal will be affirmed.

The record indicates that on May 1, 1998 the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 30, 1998 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (the Service) for removal at 1:00 p.m. on January 5, 1999 at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On February 23, 1999, the district director informed the obligor that the delivery bond had been breached.

The record further contains a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on November 30, 1998. This notice demanded that the obligor produce the bonded alien for removal on January 5, 1999. The receipt indicates that it was signed by the obligor's representative. While the recipient failed to indicate the date she received the notice, the receipt was post marked by the Postal Service and it was subsequently received at the El Paso Service office. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

On motion, the obligor contends that there has not been a substantial violation of the terms of the bond as provided in 8 C.F.R. 103.6(e) because there has been no willful departure from the terms or conditions of the bond and the conditions have been honestly and faithfully complied with and the only variance from their strict and actual performance consists of technical or unimportant occurrences.

The obligor's contentions were addressed in Matter of Allied Fidelity Insurance Company, 19 I&N Dec. 124 (Comm. 1984), where it was held that failure of the obligor to surrender the alien as required is not a mere technical or unimportant occurrence. The Commissioner held that both the obligor and the alien bear a responsibility to comply with the terms and conditions of the bond. It was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;

(c) Whether the actions which constitute the violation were committed in good faith; and

(d) Whether the alien took steps to made amends, or to put himself in compliance.

The failure of the alien to seek an administrative stay of deportation from either the district director or the Board of Immigration Appeals is ample evidence that the conditions of the bond were not accidentally violated.

Following the guidelines contained in Matter of Allied Fidelity Insurance Company, the violation was intentional because the bonded alien in this matter absconded and made the demand upon him impossible by his own actions. See Matter of S-, 3 I&N Dec. 813 (C.O. 1949). The alien's actions were not committed in good faith, and he failed to take steps to put himself in compliance. According to the obligor, the alien failed to stay in communication with the obligor and to keep the obligor updated as to his whereabouts. Such action demonstrates a complete absence of good faith on the part of the bonded alien as held in Matter of Allied Fidelity Insurance Company.

The record reflects that there has been a willful departure from the terms or conditions of the bond and the obligor's failure to deliver the alien at the scheduled time and place is not a mere technical or unimportant occurrence.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited their or the surety's convenience. Matter of L-, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The order dismissing the appeal will be affirmed.

**ORDER:** The order of November 8, 1999 dismissing the appeal is affirmed.